

BVI FATCA Update

FATCA Application

The Foreign Account Tax Compliance Act (FATCA) was introduced by the United States in 2010 with the purpose of reducing tax evasion by their citizens. FATCA requires financial institutions outside the US to report information on financial accounts held by their US customers to the Internal Revenue Service. The United Kingdom (UK) adopted a similar approach and developed 'UK FATCA' and requires a similar reporting of equivalent information to the UK by its Overseas Territories and Crown Dependencies.

Notification Process

Reporting British Virgin Islands Financial Institutions ('Reporting Institutions') are required to submit their FATCA returns to the International Tax Authority of the BVI ('ITA') via a web-based application, the BVI Financial Account Reporting System ('BVIFARS'). BVIFARS is expected to be available from 15 April 2015.

The ITA has not clarified the required steps in the Notification Process. However, they have informally stated that a letter appointing a representative/contact person will be required. The letter will not need to be notarized.

Newhaven's Observations

Below are Newhaven's observations on the BVI FATCA Guidance Notes:

- The reporting deadline has been extended to 30 June 2015 for the 2014 reporting period. However it will change to 31 May (ie 31 May 2016) in years moving forward.
- Collective Investment Vehicles ('CIVs') for the purpose of the Agreements includes any entity which is a 'fund' as defined in SIBA. These CIVs will then be treated as an Investment Entity and thus a Financial Institution under the Agreements. In reading the full CIV definition it is now more 'in line' with other jurisdictions and this is a welcome change.
- Reporting Institutions are required to submit their FATCA returns to the ITA via BVIFARS.
- If a company is acting as a Nominee Shareholder, it can elect to be treated as a Custodian Institution.
- Guidance on dormant, liquidating and struck off investment entities has been added clarifying the reporting obligations of these entities. See Section 10.18.1.
- If the account holder of a Reportable Account is no longer a Specified US/UK Person, then the Financial Account will no longer be a Reportable Account.

- A company with individual or corporate directors provided by a corporate services provider may, should it wish to do so, elect to be treated as being managed by such corporate service provider and so be an Investment Entity itself.

Other Observations

- Newhaven notes that the UK tax authorities (HMRC) announced on 11 March 2015 that they removed the NIL return reporting requirements for UK Reporting FIs.
- Newhaven notes that the Office of the Chief Counsel at the IRS has stated that submitting a NIL return is 'best practice' and that it intends to use non-filing for three consecutive years as an indicator of possible noncompliance.

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